

REMARKS

Amendments to the claims have been made to respond to the issues and concerns raised in the Office Action, to clarify aspects in the specification and claims, and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments also have been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively affecting the scope of protection provided by the disclosure and claims of the present application, and also in a manner that avoids prosecution history estoppel, limitation of the scope of equivalences, or the like. Any amendment should not be construed as an admission regarding the propriety of any objection or rejection raised in any Office Action, and the Applicant reserves the right to pursue the full scope of the unamended claims in any subsequent patent application as may be appropriate.

Claim 138 has been amended. Claims 1-137 have been cancelled. Claims 138-145 remain in the application. Each amendment is believed to have been made in accordance with Rule 121. However, should any unintended informality exist, it is requested that the undersigned be contacted by telephone so that it may be resolved as expediently as possible. It is believed the amendments fully respond to the issues raised in the Office Action. Further detail with respect to specific points raised in the Office Action is offered below.

The Office has raised a new matter concern. The Applicant disagrees that the claims pose a new matter issue as presented by the Office. However, the Applicant's amendments to the claims are believed to render the concern moot. The amendments have been presented and should be construed as noted above.

The Office maintains an obviousness issue with respect to various combinations of references including Rens '216. In particular, the Office's concern appears to rely on the use of MoFlo[®] flow cytometers as described in Rens '216 (*see e.g.* page 12 of the Office Action, stating "[i]t is this modified MoFlo[®] high speed sorter equipped with an

elliptical nozzle that is disclosed in the Rens '216 patent, over which the present claims have been rejected..."). The Applicant believes the subject matter of Rens '216 relating to MoFlo[®] flow cytometers is disqualified pursuant to 35 U.S.C. 103(c), 37 C.F.R. 1.104(c)(4), and MPEP § 706.02(l), because it is the result of a joint research agreement. Included with this response as Exhibit "A" is a statement pursuant to 37 C.F.R. § 1.104(c)(4)(iii) and MPEP § 706.02(l)(2). The specification additionally has been amended to disclose the names of the parties to the joint research agreement referred to in the statement. Accordingly, the Applicant respectfully requests the Office withdraw its obviousness concern regarding the combinations of references including Rens '216.

The Office raises various double patenting concerns. Please find attached to this response as Exhibit "B" a terminal disclaimer, which is believed to resolve the double patenting concerns.

CONCLUSION

The Applicant, having addressed each of the concerns raised in the Office Action, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. Allowance of claims 138-145 is respectfully requested.

Dated this 2nd day of April, 2008.

Respectfully submitted,
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